

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application of:		:	
STEPHEN N. WEISS ET AL.		:	
		:	
Conf. No.:	2854	:	Group Art Unit: 3711
		:	
Appln. No.:	10/699,453	:	Examiner: Urszula M. Cegielnik
		:	
Filing Date:	October 30, 2003	:	Attorney Docket No.: 4110-276U1 (405)
		:	
Title:	IMPROVED REMOTELY CONTROLLED TOY VEHICLES WITH LIGHT(S)		


PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached five sheets.

Respectfully submitted,

20 June 2006 By: 
(Date)

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REMARKS IN SUPPORT OF PRE-APPEAL BRIEF
REQUEST FOR REVIEW

Claims 4, 5, and 17-22 are pending in the application. Claims 4 and 5 are original. Claims 17-22 were added in the last responsive amendment. In the pending final action, a rejection of claims under 35 U.S.C. § 103 have been dropped but the rejections under 35 U.S.C. § 102(b) have been maintained and made final. The Examiner has rejected all remaining pending claims 4, 5 and 17-22 as being anticipated by U.S. Patent Application Publication No. 2001/0051488 (Tachau *et al.*, hereinafter “Tachau”).

Claims 4 and 5 and New Claims 17-18

The rejections of claims 4 and 5, and 17-18 are respectfully traversed for the same reasons raised in the last responsive amendment.

Initially, the pivoting wings identified by the Examiner as constituting the first and second lateral chassis portions of the claims are not chassis or chassis portions. The wings identified by the examiner are neither a frame nor working parts “exclusive of the body or housing” as stated in the definition offered by applicants or “a supporting frame of a structure” as required by the definition asserted by the examiner. As noted in the last responsive amendment, the wings of Tachau are disclosed to be unitary components (see, for example, Fig. 16A). There is no disclosure of a “frame” upon which the wing outer body or housing is mounted. The wings 1610A identified by the examiner appear to be solid but, at any rate, there is no disclosure of any internal structure and they are not structure themselves exclusive of a body or housing. They certainly are not a frame supporting any structure as would be required by the Examiner’s selected definition. If the rejection is maintained, the Examiner is called upon to identify the structure which is/are alleged to be supported by the wings 1610A in order for the wings to satisfy the dictionary definition of chassis being relied upon by the examiner.

Even if the wings 1610A are assumed to be lateral chassis portions, the Examiner’s response does not address the specific claim language of claim 4. Tachau fails to disclose at least a light source controlled to illuminate in response to a signal generated by a switch adapted to detect a position of at least one lateral chassis portion with respect to the central chassis portion. Independent claim 4 calls for, *inter alia*:

a controller circuit configured to selectively supply power from the power supply to the at least one motor in response to commands from a transmitter remote from the vehicle...,

at least one light source, the controller circuit being configured to selectively supply power to **illuminate the at least one light source in response to a signal indicating the vehicle is performing a particular maneuver,**

a **hinged, three part chassis** having a first longitudinal end and a second, opposing longitudinal end and including a central chassis portion having opposing first and second lateral sides,

a first lateral chassis portion pivotally coupled with the central chassis portion on the first lateral side of the central chassis portion, and a second lateral chassis portion pivotally coupled to the central chassis portion on a second lateral side of the central chassis portion,

wherein the first and second lateral chassis portions are coupled so as to pivot with respect to the central chassis portion in a common plane, and

wherein **the signal is generated by a switch adapted to detect a position of at least one of the lateral chassis portions relative to the central chassis portion.** (emphasis added)

In the last amendment, applicants observed that the light sources of Tachau are only disclosed to be controlled based upon generation of a signal from a gyroscope or accelerometer, or upon optical detection of simulated “gunfire”, or upon command from the remote control unit. The illumination of the light sources of Tachau are not disclosed to be controlled based upon position of the wings with respect to the fuselage, which the examiner argues are the lateral chassis portions and central chassis portion, respectively, of the claims.

In the pending action, the examiner replies “...that the claim recites ‘the signal is generated by a switch adapted to detect a position of at least one of the lateral chassis portions relative to the central chassis portion’. The limitation ‘a light source controlled to illuminate in response’ is not recited together with the above limitation.” The examiner’s reply ignores the fact that **the signal** of the last, above-quoted paragraph is the same as a **signal** in the second, above-quoted paragraph. The controller circuit (of the second above-quoted paragraph) is “configured to selectively supply power to **illuminate the at least one light source in response to a signal indicating the vehicle is performing a particular maneuver**” and (in the last quoted paragraph) “**the signal is generated by a switch adapted to detect a position of at least one of the lateral chassis portions relative to the central chassis portion.**” These are the ONLY references to “signal” in the claim. The relationship among the controller, the power

supply, the light source, the switch and the central and that least one lateral chassis portions are all tied together through the claimed signal. These requirements do not have to be presented in the same paragraph.

For at least these reasons, the rejections of original independent claim 4 and original claim 5 and new claims 17 and 18 depending therefrom are unsupported.

New claims 19-22

New independent claim 19 is essentially the same as claim 4 except that, in the last paragraph of claim 19, the claimed switch is recited as being “operably coupled with each of the first and second lateral chassis portions” instead of being “adapted to detect a position of at least one of the lateral chassis portions relative to the central chassis portion”. The rejections of independent Claim 19 and claims 20-22 depending therefrom are unsupported for the same reasons set forth above the rejection of independent claim 4 is unsupported.

Additional Ground for Allowance of Dependent Claims 5 and 20

Claim 5 depends from claim 4 and calls for:

a pair of links, each link being **pivotally coupled** to the central chassis portion and to a separate one of the first and second lateral chassis portions **at the first longitudinal end of the vehicle so as to permit the first longitudinal end of each lateral chassis portion to pivot away from and towards the central chassis portion, and a separate light source in each link.** (Emphasis added)

The language of claim 20 is identical to the above-quoted language of claim 5. Claim 20 depends from independent claim 19.

In supposed satisfaction of the above-quoted claim language, the examiner simply refers to Tachau Fig. 27 and lines 1-5 of paragraph 0052. The only elements/components referred to in those line are wings 2702 and “pivot points 2706” each provided by a pin or the like extended through the base end of the wing to pivotally secured the wing in a yoke (unnumbered). The examiner did not otherwise identify which component is allegedly one of the links or the light source in that link which is supposed to satisfy the above-bolded claim language.

Nothing in Tachau paragraph 0052 or Fig. 27 satisfies the bolded portion of the first, above-quoted paragraph of claim 5. Claim 5 requires the link to be pivotally coupled to the chassis portions **at a first longitudinal end of the vehicle** so as to permit the **first longitudinal end of the lateral chassis portion to pivot away from and towards the central chassis portion**. The wing is pivotally coupled at its base end but only the opposite/distal end of the wing can pivot away from and towards anything like the fuselage. This is inconsistent with the express language of the claims.

Furthermore, the examiner has ignored the underlined portion of the last paragraph of the above-quoted claim. The only light source disclosed in paragraph [0052] is in the optical sensor 2718, which is located on the fuselage. The fuselage would have to be the central chassis portion of the vehicle, not one of the lateral chassis portions, to satisfy the requirements of underlying independent claims 4 and 19. The examiner's further reference to paragraph [0039] adds nothing to overcome this lack of disclosure. While that paragraph refers generally to a link or joint, it goes on to refer to and discuss only joints.

For at least the foregoing reasons, the rejections of original claim 5 and new claim 20 under 35 U.S.C. § 102(b) are further unsupported.

Additional Ground for Allowance of New Dependent Claims 17-18 and 21-22

Claim 17 depends directly from Claim 4 and additionally calls for:

...at least a first one of the plurality of wheels is operably attached to the first lateral chassis portion, and at least a second one of the plurality of wheels is operably attached to the second lateral chassis portion.

Claim 18 depends directly from Claim 4 and additionally states:

...at least a first pair of the plurality of wheels are operably attached to the first lateral chassis portion, one proximal the first longitudinal end and a remaining one proximal the second longitudinal end.

Claims 21 and 22 contain identical language to claims 17 and 18, respectively but depend from independent claim 19.

The ONLY wheels identified by the Examiner are 1104B in Figure 11B. However, those wheels are NOT part of the "vehicle", plane 1110B. Rather, they are part of another vehicle, "a

wheeled chassis 1104B” on which plane 1110B is mounted “for towing purposes.” (Paragraph [0092].) These wheels are not operably attached to the wings (argued to be lateral chassis portions) but, at best, are attached only to the fuselage (argued to be the central chassis portion of the plane).

Tachau fails to disclose anywhere else, at least one wheel operably attached to each of the first and second lateral chassis portions, which have to be pivotally mounted to the central chassis portion (or fuselage), or “at least a pair of wheels” operably attached to a first (pivotally mounted) wing/lateral chassis portion. The only other planes with wheels are shown in Figs. 1E, 8 and 25-26. The wings on the plane in Fig. 1E pivot and the wheels are clearly mounted only to the fuselage. The wheels 806 in Fig. 8 are shown to be mounted to the wings but those wings do not pivot in any way. The same is true of 2516-2518 in Figs. 25-26. Thus, nowhere does the cited reference teach or suggest the provision of wheels on the pivoting wings of aircraft. In addition, the facing direction of wheels mounted to pivoting wings would change as the position of the wing is changed rendering them essentially useless for their intended purposes. Accordingly, the rejections of claims 17-18 and 20-22 to claims 17-18 are further unsupported.